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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Deployment of Wireline Services Offering)	
Advanced Telecommunications Capability)	CC Docket No. 98-147
)	
Petition of Bell Atlantic Corporation)	
For Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	CC Docket No. 98-11
)	
Petition of U S West Communications, Inc.)	
For Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	CC Docket No. 98-26
)	
Petition of Ameritech Corporation to)	
Remove Barriers to Investment in Advanced)	
Telecommunications Technology)	CC Docket No. 98-32
)	
Petition of the Association for Local)	
Telecommunications Services (ALTS))	
For a Declaratory Ruling Establishing)	
Conditions Necessary to Promote)	
Deployment of Advanced Telecommunications)	
Capability Under Section 706 of)	
Telecommunications Act of 1996)	CC Docket No. 98-78
)	
Southwestern Bell Telephone Company,)	
Pacific Bell, and Nevada Bell Petition for)	
Relief from Regulation Pursuant to Section)	
706 of the Telecommunications Act of)	
1996 and 47 U.S.C. § 160 for ADSL)	
Infrastructure and Service)	CC Docket No. 98-91

REPLY COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

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In its initial comments in this proceeding, NorthPoint Communications, Inc. ("NorthPoint") showed that under the Communications Act of 1934, as amended, US West Communications, Inc. ("US West") and other incumbent local exchange carriers ("LECs") are subject to the obligations imposed by sections 251(c)(3), (4) and (6) when they offer advanced telecommunications services, such as digital subscriber line ("DSL") services. NorthPoint further demonstrated that those obligations attach regardless of whether or not DSL is an exchange access or exchange service. Under the plain wording of the Act, incumbent LECs are subject to the market-opening requirements of section 251(c)(3), (4), and (6) insofar as they provide telecommunications services. Since no party disputes that DSL service is a telecommunications service, the requirements established by those statutory provisions clearly apply to incumbent LECs when they offer such services. Similarly, competitive LECs, such as NorthPoint, that seek to offer DSL services are entitled to access to unbundled network elements and collocation, pursuant to section 251(c)(3) and (6). Other commenters agreed with this analysis.¹

US West interprets the Act differently in its comments, arguing that its status as an incumbent LEC varies according to the particular service it is offering. US West concedes, for example, that it is an incumbent LEC when it offers interstate access service for traditional voice traffic, but claims that it is not a LEC when it offers DSL. According to US West, it is wearing its "exchange access" hat in the former case, which triggers section 251's obligations, but in the latter case it is wearing its "information access" hat and is excused from section 251's obligations. US West argues that "the mere fact that a carrier provides local exchange service as

¹ See Comments of AT&T Corp. at 4-8; Comments of Covad Communications Co. ("Covad") at 10-14; Comments of CoreComm at 5-7; Comments of the General Services Administration at 6; Comments of DSLnet Communications at 3-4.

an incumbent LEC does not mean that *all* of its telecommunications services are subject to incumbent LEC regulation."²

US West, however, cannot minimize the significance of this "fact" under the plain language of the Act. As set forth in NorthPoint's comments, this fact does indeed mean that all of US West's telecommunications services are subject to the obligations in section 251. As Covad observed in its comments, "[n]othing in Section 251 suggests that the Section's market-opening obligations apply only when a LEC provides a voice-oriented, conventional telecommunications service. Congress was well aware that, increasingly, incumbent LECs would be providing advanced telecommunications services. Had Congress intended to limit the obligations of incumbent LECs that provide advanced telecommunications services it easily could have done so. For example, Congress could have stated, in Section 251(h), that an entity is an incumbent LEC in a given area only '*to the extent* that it provides local exchange service in that area.'"³

US West seeks to support its argument by pointing to the service offerings of GTE and Sprint in some markets. According to US West, "even though GTE and Sprint are the incumbent LECs in some service areas . . . , competitors cannot obtain unbundled access to the elements of Sprint's long-distance and international networks under section 251(c)(3), or resale discounts on

² *Id.* at 16-17.

³ Covad Comments at 11 (footnote omitted). *See also* Comments of AT&T Corp. 4-5. Congress knew how to carve out an exception from its broad definition of "local exchange carrier," for it did so with respect to commercial mobile service. *See* 47 U.S.C. § 153(26) (The term "local exchange carrier . . . does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term."). Congress, however, created no such exception for advanced services.

GTE's nationwide Internet backbone under section 251(c)(4), because these are not services provided by Sprint or GTE in their capacities as 'incumbent local exchange carriers.'"⁴

This argument is more hypothetical than real. To the extent that GTE and Sprint offer long distance services in markets in which they are incumbent LECs, they are required under the Commission's rules to provide their in-region long-distance services through a separate affiliate.⁵ Such separate affiliates for long-distance service provide neither exchange nor exchange access services and, by statutory definition, are not incumbent LECs and therefore are not subject to section 251's obligations.

Moreover, even assuming the services were offered through the same entity, the incumbent LEC would only be required to provide unbundled access to long-distance service upon a Commission finding under section 251(d)(2)(B) that the failure to provide such access "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."⁶ The Commission, of course, has made no such finding, nor would it need to do so given the competitive nature of the long-distance market. US West's arguments consequently raise issues of little practical significance. They certainly cannot alter the plain meaning of the Act.

In a further attempt to buttress its argument, US West refers to the scenario where AT&T enters a local market to provide local telephone service, thus becoming a LEC under section

⁴ *Id.* at 17.

⁵ See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 12 FCC Rcd 15756, at ¶ 7 (1997) ("We . . . require the independent LECs to provide their in-region, interstate, domestic, interexchange services through separate affiliates that satisfy the separation requirements adopted in the *Competitive Carrier Fifth Report and Order*, [98 FCC 2d 1191, 1198 (1984)].").

⁶ *Id.* at § 251(d)(2)(B).

251(b) of the Act. US West asserts that "no one suggests that AT&T is subject to that section when it sells long-distance services in the same market, since it does not provide those services in its capacity as a LEC. Thus, a competitor cannot demand the right to resell AT&T's long-distance voice and Internet backbone services under the requirements of section 251(b)(1) or demand access to the rights-of-way containing AT&T's interexchange fibers under section 251(b)(4)."⁷

Again, US West's argument is of little more than academic interest. To the extent AT&T's long-distance and local exchange services are offered through separate affiliates, section 251(b)'s obligations only apply to the LEC affiliate. Even if this were not the case, most of these obligations, including those concerning number portability, dialing parity, and reciprocal compensation, are inherently local in nature and therefore do not implicate long distance services. It is also important to note that, whether or not section 251(b)(1)'s resale requirements apply, the Commission has a longstanding policy under sections 201 and 202 of the Act that requires all common carriers, including AT&T, to permit unlimited resale of their services.⁸ Finally, to the extent AT&T creates an entity in a market that offers both long-distance and local exchange service, that entity is only subject to section 251(b)'s obligations in the area in which it operates as a LEC, just as an incumbent LEC's obligations under section 251(c) only extend to the areas in which it provides incumbent local exchange services. Thus, for example, in such a

⁷ US West Comments at 10-11.

⁸ See *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC2d 261 (1976), *amended on recon.*, 62 FCC2d 588 (1977), *aff'd sub nom. American Telephone and Telegraph Co. v. FCC*, 572 F.2d 17 (2d Cir. 1978). See also *AT&T Communications*, 10 FCC Rcd 1664 (1995) (initiating enforcement action against AT&T for apparent refusal to provide service to resellers).

scenario a competitor could only demand access to AT&T's rights-of-way in the area in which AT&T is offering local services.

From the perspective of DSL providers such as NorthPoint, US West's arguments appear to be largely aimed at denying its competitors the right to unbundled access to its digital subscriber line access multiplexers ("DSLAMs") under any circumstances. It concedes that it must provide unbundled access to network elements, such as local loops, that it uses to provide what it categorizes as telephone exchange service or exchange access. US West further concedes that "a telephone company's obligation to provide access to unbundled elements is not dependent on the requester's provision of telephone exchange service or exchange access; rather, unbundled elements must be made available to providers of any telecommunications service, including advanced services."⁹ But it draws the line at DSLAMs. It argues that the Act exempts such advanced services facilities from section 251(c)(3)'s obligations.¹⁰

As explained above and in NorthPoint's initial comments, this reading of the Act is inconsistent with its plain wording. In addition, it is contrary to the Commission's recent decision in the *Third Report and Order and Fourth Further Notice of Rulemaking* in CC Docket No. 96-98, which specified the network elements subject to section 251(c)(3)'s unbundled access requirements. Although the Commission ruled in that decision that incumbent LECs are generally not required to unbundle DSLAMs, it did require such unbundling where "a requesting carrier is unable to install its [DSLAM] at the incumbent LEC's remote terminal, and the

⁹ US West Comments at 19.

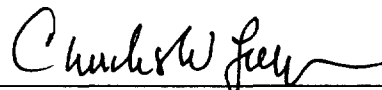
¹⁰ *Id.* at 2-3, 19.

incumbent LEC provides packet switching for its own use."¹¹ The Commission should reject US West's attempt to undo this decision.

RESPECTFULLY SUBMITTED,



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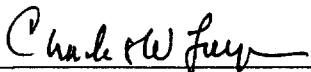
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October 1, 1999

¹¹ *FCC Promotes Local Telecommunications Competition*, Report No. CC 99-41 (released Sept. 15, 1999).

CERTIFICATE OF SERVICE

I, Charles W. Logan, do hereby certify that on this day of October 1, 1999, I caused a copy of the foregoing Reply Comments of NorthPoint Communications, Inc. to be served upon each of the parties listed on the attached Service List.



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